

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:

REDF MARKETING, LLC,

Debtor.

THE FINLEY GROUP,
In its capacity as the Liquidating Agent for
REDF MARKETING, LLC,

Plaintiff,

v.

STATE OF NORTH CAROLINA,

Defendant.

STATE OF NORTH CAROLINA,

Third-Party Plaintiff,

v.

PACKARD PLACE PROPERTIES, LLC,
DANIEL J. ROSELLI, AND SARA G.
ROSELLI,

Third-Party Defendants.

CASE No. 12-32462
CHAPTER 11

ADV. PRO. No. 14-03267

**STIPULATION FOR, AND
VOLUNTARY DISMISSAL OF,
THIRD-PARTY COMPLAINT
(WITHOUT PREJUDICE)**

Defendant and third-party plaintiff the State of North Carolina, pursuant to Fed. R. Bankr. P. 7041 and Fed. R. Civ. P. 41(c) and 41(a)(1)(A)(ii), hereby dismisses its third-party complaint against third-party defendants Packard Place Properties, LLC, Daniel J. Roselli, and Sara G. Roselli. This dismissal is without prejudice, and has been stipulated to by the plaintiff and the third-party defendants. This dismissal does not constitute a release

or waiver of any rights the State may now have or hereafter acquire, and the same are expressly reserved.

February 9, 2017.

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Attorney General

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:

REDF MARKETING, LLC,

Debtor.

Chapter 11

Case No: 12-32462

THE FINLEY GROUP, Liquidating
Agent for REDF MARKETING, LLC,

Plaintiff,

v.

Adversary Proceeding No.: 14-03267

STATE OF NORTH CAROLINA,

Defendant.

THIS SETTLEMENT AGREEMENT AND RELEASE, dated as of February 21, 2017 (the "Agreement"), is entered into by The Finley Group in its capacity as the liquidating agent (the "Liquidating Agent") for Redf Marketing, LLC (the "Debtor"), and The State of North Carolina (the "State"). The Liquidating Agent and the State are collectively referred to, when applicable, as the "Parties."

RECITALS:

WHEREAS, on October 12, 2012 (the "Petition Date"), an involuntary petition was filed against Debtor under chapter 7 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of North Carolina (the "Bankruptcy Court");

WHEREAS, on October 29, 2012, the Bankruptcy Court converted this case to a proceeding under Chapter 11 of the Bankruptcy Code;

WHEREAS, on April 29, 2013, the Bankruptcy Court confirmed the Debtor's modified plan of liquidation, and appointed the Liquidating Agent to investigate and pursue avoidance action claims for the benefit of the Debtor's bankruptcy estate (the "Estate");

WHEREAS, the Liquidating Agent believes that the Estate has colorable avoidance action claims against the State, which the State disputes;

WHEREAS, on October 10, 2014, the Liquidating Agent filed an adversary proceeding entitled *The Finley Group, Liquidating Agent for Redf Marketing, LLC v. State of North Carolina*, Adversary Proceeding No. 14-03267 (the "Action"), seeking to avoid and recover payments made to the State by the Debtor totaling \$66,970.00, pursuant to sections 544, 548, and 550 of the Bankruptcy Code and N.C.G.S. § 39-23.1 *et seq.* (the "Avoidance Action Claims");

WHEREAS, the State believes that it has valid, meritorious legal and/or factual defenses to the Avoidance Action Claims asserted in the Action; and

WHEREAS, the Parties now wish to enter into this Agreement to resolve all disputes amongst them related to the Action, the Avoidance Action Claims, and the defenses thereto, and to fully memorialize the terms of their settlement.

WITNESSETH:

NOW, THEREFORE, in consideration of the promises herein contained, and other good and valuable consideration, the Parties agree as follows:

1. **Settlement Payment.** The State shall pay the sum of \$32,500.00 (the "Settlement Payment") via check made payable to "The Finley Group for Redf Marketing" and delivered to The Finley Group, c/o Elaine T. Rudisill, 212 S. Tryon Street, Suite 1050, Charlotte, North Carolina 28202. The Settlement Payment shall be delivered to the aforementioned address within ten (10) business days from the entry of a final, non-appealable order entered by the Bankruptcy Court approving this Agreement.

2. **Effectiveness.** This Agreement shall be effective upon the execution of the Agreement by the Parties and the Bankruptcy Court's entry of an Order approving this Agreement.

3. **Motion to Approve Agreement.** Within five (5) business days from the execution of this Agreement by all Parties, the Liquidating Agent shall file a motion to approve this Agreement with the Bankruptcy Court.

4. **Releases by the Estate.** For and in consideration of the terms of this Agreement and other good and valuable consideration, the Liquidating Agent on behalf of the Estate does hereby release, acquit and forever discharge the State and its successors, parents, predecessors, divisions, affiliated companies, and subsidiaries as well as its heirs, agents, insurers, officers, directors, employees, administrators, attorneys and assigns (together, the "State Released Parties") from any and all claims, actions, causes of action, charges, demands, losses, fees and any other damages of every kind, nature and description whatsoever that the Estate ever had, now has, or may have in the future, whether known or unknown, against the State Released Parties related to the Avoidance Action Claims and the Action; provided however, that this release shall not be effective until the Order approving this Agreement has become a final order of the Bankruptcy Court and the Settlement Payment is received by the Liquidating Agent as provided in Section 1 of this Agreement. For the avoidance of doubt, nothing contained herein should be construed to release any claims or causes of action against Daniel Roselli and Sara Roselli (the "Rosellis"), or to release any claim or cause of action against the Rosellis'

successors, parents, predecessors, divisions, affiliated companies, and subsidiaries as well as their heirs, agents, insurers, officers, directors, employees, administrators, attorneys and assigns.

5. **Releases by the State.** For and in consideration of the terms of this Agreement, and other good and valuable consideration, the State does hereby release, acquit and forever discharge the Debtor, the Estate, the Liquidating Agent and their respective successors, parents, predecessors, divisions, affiliated companies and subsidiaries, as well as their agents, insurers, officers, directors, employees, administrators, attorneys and assigns (together, the "Estate Released Parties") from any and all claims, actions, causes of action, charges, demands, losses, fees and any other damages of every kind, nature and description whatsoever that the State ever had, now has, or may have in the future, whether known or unknown, against the Estate Released Parties related to the Avoidance Action Claims and the Action; provided however, that this release shall not be effective until the Order approving this Agreement has become a final order of the Bankruptcy Court.

6. **Dismissal of Action.** Within ten (10) business days of the Liquidating Agent's receipt of the Settlement Payment, the Liquidating Agent will file in the Action a *Stipulation of Dismissal with Prejudice* executed by all Parties.

7. **Compromise Not An Admission.** The Parties agree and acknowledge that this Agreement is being entered into only for the purpose of avoiding the burdens, inconveniences and expenses of further disputes and litigation between the Parties as it relates to the Avoidance Action Claims at issue and is not and shall not be construed or deemed to be an admission or concession by any party as to the merits of any claim or defense of the Parties.

8. **Governing Law.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with the laws of the State of North Carolina.

9. **Counterparts.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

10. **Severability.** The Parties agree that if any term of this Agreement is deemed to be invalid for any reason, the remaining terms and provisions shall retain their full force and effect.

11. **No Waiver of Right to Enforce Terms of Agreement.** By signing this Agreement, the Parties do not waive any right or claim to enforce the terms of this Agreement, but rather the Parties specifically reserve their rights to bring an action in a court of competent jurisdiction to enforce the terms of this Agreement.

12. **No Assignment.** The Parties covenant and agree that each has not assigned, transferred or conveyed in any manner all or any part of their legal claims or legal rights in connection with the matters described above.

13. **Successors In Interest.** This Agreement shall be binding upon the Parties and each of their respective heirs, predecessors, successors, assigns, affiliates, agents, insurers, employees, legal representatives and any other persons or entities acting on their behalf or claiming through or under them or any of them, and shall inure to the benefit of all the Parties, as well as each of their respective heirs, predecessors, successors, assigns, affiliates, agents, insurers, employees, legal representatives and any other persons or entities acting on their behalf or claiming through or under them or any of them.

14. **Entire Agreement.** No promise or agreement other than those recited above has been made as consideration for the releases and discharges effected by this Agreement, and the Parties enter into this Agreement for the sole consideration recited herein. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior proposals, negotiations, understandings, representations and agreements relating to such subject matter.

15. **All Amendments Must Be In Writing.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated in any manner, except by written instrument signed by all of the Parties.


16. **Costs and Fees.** The Parties agree that they shall pay their own costs and attorneys' fees associated with the negotiation and execution of this Agreement.

17. **Authority.** The Parties represent and warrant that he/she/it is fully authorized to execute this Agreement on behalf of the respective party.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered on the date first written above.

THE FINLEY GROUP, in its capacity as the
Liquidating Agent for Redf Marketing, LLC

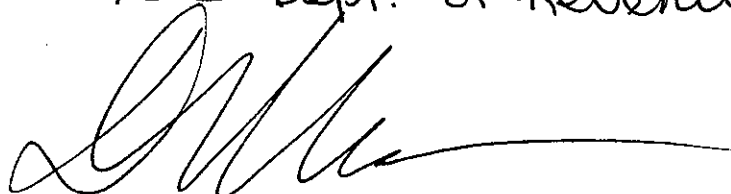
 (SEAL)

By: Elaine T. Rudisill
Its: Managing Director

The State of North Carolina

 (SEAL)

By: Thomas O. Robbins
Its: Manager, Bankruptcy Unit
N.C. Dept. of Revenue


David P. Lennon
Assistant Attorney General
Counsel for State of North Carolina